

SECOND JUDICIAL DISTRICT
 COUNTY OF BERNALILLO
 STATE OF NEW MEXICO

DEREK R. HAMILTON,

Plaintiff,

v.

No. D-202-CV-2015-01655

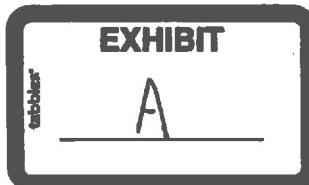
MARK ACUNA, and JEFF DAVIS d/b/a
 THE DAVIS LAW FIRM,

Defendants.

**FIRST AMENDED COMPLAINT FOR LEGAL MALPRACTICE
 AND VIOLATION OF UNFAIR TRADE PRACTICES**

Plaintiff Derek Hamilton, by and through his attorney, Daymon B. Ely, brings this Complaint and states:

1. Derek Hamilton is a resident and citizen of Bernalillo County, New Mexico.
2. On information and belief, Mark Acuna is a resident and citizen of Texas; Jeff Davis is a resident of Texas and The Davis Law Firm does business in both New Mexico and Texas.
3. The events giving rise to this lawsuit occurred in New Mexico.
4. Mr. Hamilton was in an accident on or about January 31, 2011.
5. Mr. Hamilton and his wife saw a billboard "Jeff's Got Your Back".
6. Based in whole or in part on that billboard they hired the Davis Law Firm thinking they would be receiving the direct services of Jeff Davis.
7. Mr. Hamilton signed a fee agreement which obligated him to pay a 45% contingency fee agreement if the action was filed.



Count One – Legal Malpractice

8. Plaintiff re-alleges and incorporates, by reference, the facts and allegations set forth above.

9. Mark Acuna and/or Jeff Davis d/b/a The Davis Law Firm, and each of them, were negligent and fell below the standard of care for attorneys in New Mexico by, among other things, failing to properly prepare the client for deposition, failing to review records, failing to identify proper experts, failing to prepare experts, failing to file motions related to the defendant's expert(s), failing to timely identify elements of damages and otherwise failing to handle the client's case with reasonable care.

10. As a cause of such negligence, Mr. Hamilton lost substantial value in the case and lost the opportunity for a better result.

Count Two – Unfair Trade Practices Act

11. Plaintiff re-alleges and incorporates, by reference, the facts and allegations set forth above.

12. Defendants, and each of them, violated the New Mexico Unfair Trade Practices Act, NMSA §57-12-*et. seq.* and specifically committed unconscionable trade practices, by taking advantage of the lack of knowledge, ability, experience and/or capacity of the Plaintiff to a grossly unfair degree by, among other things, charging an exorbitant rate, the over-use of paralegals (where the client did not see or talk to a lawyer for a lengthy period of time), by charging the client costs associated with the firm having its place of business in Texas, and by falsely implying that "Jeff" was a New Mexico lawyer who "had his back" when, in fact, Jeff Davis is not a New Mexico attorney.

13. As a cause of these statutory violations, Plaintiff suffered those damages set forth above and is seeking those damages provided for in the Unfair Trade Practice Act, NMSA §57-12-10 including, but not limited to, treble damages and attorney's fees.

WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, in an amount reasonable to compensate the Plaintiff, for treble damages, attorney's fees, costs, interest, including pre-judgment interest, and such other relief as this Court may deem appropriate.

Electronically filed,

LAW OFFICE OF DAYMON B. ELY

By:/S/Daymon B. Ely
Daymon B. Ely
1228 Central Ave. S.W.
Albuquerque, N.M. 87102
(505) 248-0370
(505) 248-0261 FAX

Attorney for Plaintiff

AFFIDAVIT OF SERVICE

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4/14/2015 4:19:07 PM

James A. Noel

Second Judicial District Court of Appeals

State of New Mexico

County of Bernalillo

Case Number: D-202-CV-2015-01655

Plaintiff:

DEREK R. HAMILTON

vs.

Defendant:

MARK ACUNA and JEFF DAVISd/b/a THE DAVIS LAW FIRM

Received these papers on the 16th day of March, 2015 at 5:00 pm to be served on Jeff Davis d/b/a The Davis Law Firm, 1050 Heritage Blvd., Ste. 102, San Antonio, TX 78216.

I, Richard A. Mayen SCH# 841, being duly sworn, depose and say that on the 17th day of March, 2015 at 2:19 pm, I:

Personally delivered a true copy of the Summons, Certification regarding Arbitration Pursuant to LR2-603 and Complaint for Legal Malpractice and Violation of Unfair Trade Practices with the date and hour of service endorsed thereon by me, to: Jerry Arnold as Receptionist at the address of: 10500 Heritage Blvd., Suite 102, San Antonio, TX 78216, and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 30, Sex: M, Race/Skin Color: Black, Height: 5'9", Weight: 170, Hair: Black, Glasses: N

I am over the age of 18 years, of sound mind, am not a party to or interested in the above styled and numbered cause. I have personal knowledge of the facts and statements contained in this affidavit and each is true and correct. Further Affiant Sayeth Not.

Subscribed and Sworn to before me on the 19th day of March, 2015 by the affiant who is personally known to me.


NOTARY PUBLIC


Richard A. Mayen SCH# 841
Expiration Date: 7/31/17

Our Job Serial Number: MAY-2015000202
Ref: 2015003965



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James A. Noel

Nadine Spencer

Second Judicial Court

State of New Mexico**County of Bernalillo****Case Number: D-202-CV-2015-01655****Plaintiff:****DEREK R. HAMILTON****vs.****Defendant:****MARK ACUNA and JEFF DAVISd/b/a THE DAVIS LAW FIRM**

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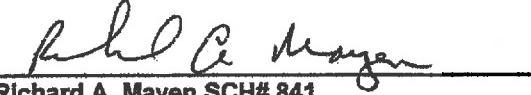
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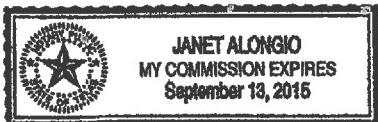


NOTARY PUBLIC



Richard A. Mayen SCH# 841
Expiration Date: 7/31/17

Our Job Serial Number: **MAY-2015000203**
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James A. Noel

Second Judicial Nadine Spencer

State of New Mexico

County of Bernalillo

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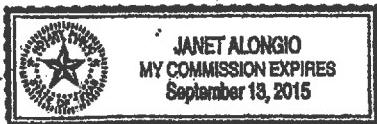
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Janet Alongio
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Richard A. Mayen
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Second Judicial District Court

Nadine Spencer

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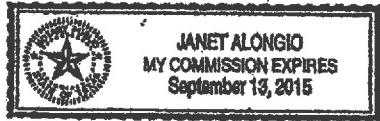


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James A. Noel
Catherine Chavez

SECOND JUDICIAL DISTRICT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

DEREK R. HAMILTON,

Plaintiff,

v.

No. D-202-CV-2015-01655

MARK ACUNA, and JEFF DAVIS d/b/a
THE DAVIS LAW FIRM,

Defendants.

CERTIFICATION REGARDING
ARBITRATION PURSUANT TO LR2-603

COMES NOW the Plaintiff, by and through his attorney, Daymon E. Ely and hereby certifies that the amount sought in this action exceeds \$25,000.00, exclusive of punitive damages, interest, costs and attorney fees.

Electronically Filed,

/S/Daymon B. Ely
Law Office of Daymon B. Ely
1228 Central Ave., S.W.
Albuquerque, NM 87102
(505) 248-0370

Attorney for Plaintiff

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SECOND JUDICIAL DISTRICT
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